IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18813 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIPULBHAI ASHOKBHAI CHAPATWALA - Petitioner(s)

Versus

MANAGAERR, G E B - Respondent(s)

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Appearance :

MR YATIN SONI for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
UNSERVED-WANT OF TIM for Respondent(s) : 1.2.1,1.2.2
MR AD OZA for Respondent(s) : 1.2.2

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/02/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order and/or directions restraining the respondent Gujarat Electricity Board from recovering any amount from the petitioner with reference to Meter bearing Consumer No.12606/02502/0 and Meter No.49477 and has also challenged the order dtd.9/3/2005 passed by the Appellate Committee of the G.E.B. The petitioner has also further prayed for a declaration that the respondent G.E.B. has no power, authority to recover any amount from the petitioner with reference to Meter of Bhanubhai Motiram Narkhede i.e. the earlier owner and the petitioner cannot be held responsible for the supplementary bill and therefore, the amount

paid by the petitioner towards the supplementary bill be refunded to the petitioner.

2. That one deceased Bhanubhai Motiram Narkhede was the owner of the property bearing Plot No.105 of Survey Nos.116, 117 and 118 of Bhestan, Surat. The heirs of said Bhanubhai Motiram Narkhede were doing business of Powerlooms. The said persons were having electricity connection having Consumer No.12602/02502/0 bearing Meter No.49477. It is the contention on behalf of the petitioner that the petitioner has purchased the aforesaid immovable property from the heirs of deceased Bhanubhai Motiram Narkhede by registered sale-deed dtd.15/2/2003 and on the same day, the possession of the premises was taken over by the petitioner. It is the contention on behalf of the petitioner that the petitioner purchased the said premises from the heirs of Bhanubhai Motiram Narkhede and at that time, the electric supply

was already disconnected by G.E.B., as the original owner had not paid the electricity charges and approximately Rs.1,47,937.43 ps. was due and payable to the G.E.B. It is the contention on behalf of the petitoienr that thereafter, the petitioner approached the Deputy Engineer, G.E.B., Udhna for settlement and for re-connection of the said electric connection by making an application dtd.19/12/2003 and the said application was filed by the petitioner as per the Scheme named and called as “Samadhan Yojana” of the respondent G.E.B. and the respondent G.E.B. directed the petitioner by letter dtd.7/4/2005 to pay Rs.78,713=00 towards the full and final settlement of the entire outstanding amount. In pursuance of the same, the petitioner deposited Rs.25,000=00 on 31/3/2004 and Rs.53,713=00 on 7/6/2004. It is the case on behalf of the petitioner that the petitioner requested the respondent GEB to transfer the said meter in the name of the petitioner. However, the

respondent GEB informed the petitioner that the said Meter cannot be transferred in the name of the petitioner. However, if the petitioner wants to have new electric connection, the petitioner has to apply for new connection and accordingly, the petitioner applied for new connection and on payment of necessary charges, security deposit etc., new connection was given to the petitioner. It is also the case on behalf of the petitioner that thereafter, after allotting new electric connection, the officer of the respondent GEB came for checking on 19/8/2004 and took the old Meter in his custody for checking purpose and the said old Meter was sent for laboratory testing and mal-practice was detected after test report and on the basis of the laboratory report, the respondent GEB issued supplementary bill for theft for an amount of Rs.2,19,542.40 ps. and as the petitioner had not paid the said supplementary bill, the respondent GEB disconnected the electric supply of the

petitioner of new connection. It is the case on behalf of the petitioner that thereafter, the petitioner preferred an appeal before the appellate committee against the supplementary bill of Rs.2,19,542.40 ps, and on deposit of Rs.42,419-00 and Rs.450-00, the appeal was entertained and the electricity connection was reconnected. It is the contention on behalf of the petitioner that thereafter the appellate committee of G.E.B. fixed the date of hearing of the appeal and on 25/2/2005, the petitioner made representation. It is the contention on behalf of the petitioner that thereafter, without hearing the parties and without considering the submissions made on behalf of the petitioner, the appellate committee by an order dt.9/3/2005 directed the petitioner to pay Rs.1 Lac on or before 8/4/2005. Being aggrieved by and dissatisfied with the said order of the appellate committee of the respondent GEB dtd.9/3/2005, the petitioner has preferred the present petition for

the aforesaid reliefs.

3. Mr.Yatin Soni, learned advocate appearing on behalf of the petitioner has vehemently submitted that the impugned order dtd.9/3/2005 is passed without considering the submissions of the petitioner. He has also further submitted that the father of the petitioner had appeared before the appellate committee and had tried to explain true facts to the appellate committee. However, without giving an opportunity to make his submissions and without considering the written representation dtd.25/2/2005 the Member of the appellate committee passed the impugned order and compelled the petitioner to agree to pay money as directed by the appellate committee in the impugned order. It is also submitted by him that in fact, the petitioner never agreed for alleged terms willingly and the same is null and void. It is also further submitted by him that the respondent GEB is trying to enforce condition

NO.2(J) which provides that the application for reconnection or new connection shall not be entertained by G.E.B. where there are arrears of G.E.B. outstanding from the earlier consumer / customer. It is submitted that when the petitioner was granted new electricity connection and the petitioner paid the said amount for new connection, it is not open for the respondent to recover the amount / dues of the consumer / erstwhile owner i.e. dues towards the old connection.

4. In response to the notice issued by this Court, Mr.Hemang Raval appears for Mr.A.D. Oza for G.E.B. Affidavit-in-reply is also filed on behalf of the respondent Nos.1 and 2. It is submitted that it is not open for the petitioner to challenge the order dtd.9/3/2005 as it is a consent order and the petitioner agreed to pay a sum of Rs.1,00450-00. It is further submitted that because of the fact that the petitioner

wanted to settle the dispute, the dues were reduced from Rs.2,19,542-40 ps. to 1,42,740-00 and there is suppression on the part of the petitioner. It is also submitted that the contention on behalf of the petitioner that the petitioner never agreed to pay the said amount and enter into any agreement, is nothing but an after thought and till the present petition came to be filed, no grievance was made on behalf of the petitioner. It is also further submitted that on the contrary the petitioner deposited Rs.450.00 in cash on 9/3/2005 pursuant to the order dtd.9/3/2005 and an amount of Rs.1 Lac was to be paid on or before 8/4/2005. When the petitioner did not pay the said amount of Rs.1 Lac as per the compromise, the officer of the respondent had gone to recover the said amount and the petitioner had tendered a post dated cheque of Rs.15,000-00 dtd.10/9/2005 on 6/9/2005 and thereafter the present petition has been filed, which is nothing but a dishonest plea on

the part of the petitioner. It is submitted that once the petitioner has entered into the compromise, it is not open for the petitioner to challenge the same. It is also further submitted that so far as the contention on behalf of the petitioner that the petitioner cannot be made liable to pay the dues of the erstwhile owner is concerned, in fact the very petitioner preferred an appeal before the appellate committee and entered into compromise and even paid 30% of the amount while preferring the appeal and subsequently agreed to pay the reduced amount and therefore, it is not open for the petitioner now to contend that the petitioner is not liable to pay any amount towards the dues of the erstwhile owner of the old meter and therefore, it is requested to dismiss the present petition.

5. It is required to be noted that when the petitioner purchased the property from Bhanubhai Motiram Narkhede, there were outstanding dues of

rs.1,47,937.43 ps. The petitioner approached the respondent Board and submitted an application under “Samadhan Yojana” and the petitioner agreed to pay an amount of Rs.78,713-00 towards the full and final settlement of the outstanding amount. It is also required to be noted that thereafter the old meter was inspected and was sent to laboratory for further inspection and it was found that there was mal-practice committed and therefore, supplementary bill of Rs.2,19,542.40 was issued. It is the petitioner who preferred an appeal before the appellate committee on payment of 30% of the amount of the supplementary bill and got reconnection and it is the petitioner who represented the case before the appellate committee. The matter was heard by the appellate committee on 9/3/2005 and it is recorded in the order that the petitioner has entered into compromise and supplementary bill of Rs.2,19,542.40 ps, was reduced to Rs.1,42,740-00 and as the petitioner has earlier paid

Rs.42,219.00, the petitioner was required to pay Rs.1,00,450-00. Even pursuant to the said order dtd.9/3/2005 (which is a consent order), the petitioner paid Rs.450-00 in cash and balance amount of Rs.1 Lac was required to be paid by the petitioner on or before 8/4/2005. It is required to be noted that the aforesaid consent order is dtd.9/3/2005 and till the present petition came to be filed i.e. till 12/9/2005, the petitioner has never made any grievance with regard to consent order / compromise dtd.9/3/2005 and/or the said compromise was by compulsion. The petitioner and/or his father was compelled to enter into the compromise. It is also required to be noted that the petitioner was required to pay an amount of Rs.1 Lac on or before 8/4/2005 but the petitioner did not pay the said amount and therefore, the officers of the respondent Board approached the premises of the petitioner on 6/9/2005 and the petitioner issued post dated cheque of Rs.15,000-00 dtd.10/9/2005. It is

required to be noted that even on that day also, the petitioner did not raise any grievance that the aforesaid compromise is by compulsion and the petitioner and/or his father was compelled to sign the compromise pursis. Under the circumstances, the aforesaid conduct of the petitioner shows that the contention raised on behalf of the petitioner that the compromise was under compulsion is nothing but an after thought and the same cannot be accepted. It is required to be noted that in the present petition, the petitioner has come out with a case that the impugned order dtd.9/3/2005 is passed without considering the submissions made on behalf of the petitioner dtd.25/2/2005 and without giving any opportunity as stated above. When the petitioner has entered into the compromise and the supplementary bill of Rs.2,19,542.40 came to be reduced to Rs.1,42,740-00 as per the request made on behalf of the petitioner, there was no question of considering any further submission

dtd.25/2/2005 as the same was not required to be decided thereafter on merits. Under the circumstances and in view of the consent order dtd.9/3/2005, it is not open for the petitioner now to challenge the said order dtd.9/3/2005. The contention and submission made on behalf of the petitioner that the aforesaid consent order is by compulsion cannot be accepted as it is not only an after thought, but also a dishonest attempt on the part of the petitioner. Once having got supplementary bill reduced by compromise and paid part payment of Rs.450-00 of the reduced amount as per the impugned order dtd.9/3/2005, by the petitioner, the petitioner cannot subsequently raise a grievance that the impugned settlement is under compulsion. So far as the contention on behalf of the petitioner with regard to applicability of sec.2(J) of the Condition of Supply and recovering the dues of the erstwhile owner from the petitioner is concerned, it is required to be noted that it is

the petitioner who agreed to pay the dues of the erstwhile owner, not only that, he preferred appeal on payment of 30% amount of the supplementary bill, he represented the case before the appellate authority and he entered into the compromise. Thus, when the petitioner himself has agreed to pay the amount of erstwhile owner, there is no question of applicability of sec.2(J) by the respondent.

6. Under the circumstances and for the reasons stated hereinabove, there is no substance in the petition and the petition fails. Rule is discharged. Ad-interim relief granted earlier if any, stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH,J.)

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